

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Hicks (Rasul) v. Bush	)	Case No. 02-CV-0299 (CKK)
Al Odah v. United States	)	Case No. 02-CV-0828 (CKK)
Habib v. Bush	)	Case No. 02-CV-1130 (CKK)
Kurnaz v. Bush	)	Case No. 04-CV-1135 (ESH)
Khadr v. Bush	)	Case No. 04-CV-1136 (JDB)
Begg v. Bush	)	Case No. 04-CV-1137 (RMC)
Khalid (Benchellali) v. Bush	)	Case No. 04-CV-1142 (RJL)
El-Banna v. Bush	)	Case No. 04-CV-1144 (RWR)
Gherebi v. Bush	)	Case No. 04-CV-1164 (RBW)
Boumediene v. Bush	)	Case No. 04-CV-1166 (RJL)
Anam v. Bush	)	Case No. 04-CV-1194 (HHK)
Almurbati v. Bush	)	Case No. 04-CV-1227 (RBW)
Abdah v. Bush	)	Case No. 04-CV-1254 (HHK)
Al-Qosi v. Bush	)	Case No. 04-CV-1937 (PLF)
Paracha v. Bush	)	Case No. 04-CV-2022 (PLF)
Al-Marri v. Bush	)	Case No. 04-CV-2035 (GK)
Zemiri v. Bush	)	Case No. 04-CV-2046 (CKK)
Deghayes v. Bush	)	Case No. 04-CV-2215 (RMC)
Mustapha v. Bush	)	Case No. 05-CV-0022 (JR)
Abdullah v. Bush	)	Case No. 05-CV-0023 (RWR)
Al-Mohammed v. Bush	)	Case No. 05-CV-0247 (HHK)

El-Mashad v. Bush	)	Case No. 05-CV-0270 (JR) (Consolidated with 05-CV-833)
Al-Adahi v. Bush	)	Case No. 05-CV-0280 (GK)
Al-Joudi v. Bush	)	Case No. 05-CV-0301 (GK)
Al-Wazan v. Bush	)	Case No. 05-CV-0329 (PLF)
Al-Anazi v. Bush	)	Case No. 05-CV-0345 (JDB)
Alhami v. Bush	)	Case No. 05-CV-0359 (GK)
Ameziane v. Bush	)	Case No. 05-CV-0392 (ESH)
Batarfi v. Bush	)	Case No. 05-CV-0409 (EGS)
Sliti v. Bush	)	Case No. 05-CV-0429 (RJL)
Kabir v. Bush	)	Case No. 05-CV-0431 (RJL)
Qayed v. Bush	)	Case No. 05-CV-0454 (RMU)
Al-Shihry v. Bush	)	Case No. 05-CV-0490 (PLF)
Aziz v. Bush	)	Case No. 05-CV-0492 (JR)
Al-Oshan v. Bush	)	Case No. 05-CV-0520 (RMU)
Tumani v. Bush	)	Case No. 05-CV-0526 (RMU)
Al-Oshan v. Bush	)	Case No. 05-CV-0533 (RJL)
Salahi v. Bush	)	Case No. 05-CV-0569 (JR) (Consolidated with 05-CV-0881) (Consolidated with 05-CV-0995)
Mammar v. Bush	)	Case No. 05-CV-0573 (RJL)
Al-Sharekh v. Bush	)	Case No. 05-CV-0583 (RJL)
Magram v. Bush	)	Case No. 05-CV-0584 (CKK)
Al Rashaidan v. Bush	)	Case No. 05-CV-0586 (RWR)

Mokit v. Bush	)	Case No. 05-CV-0621 (PLF)
Al Daini v. Bush	)	Case No. 05-CV-0634 (RWR)
Errachidi v. Bush	)	Case No. 05-CV-0640 (EGS)
Ahmed v. Bush	)	Case No. 05-CV-0665 (RWR)
Battayav v. Bush	)	Case No. 05-CV-0714 (RBW)
Adem v. Bush	)	Case No. 05-CV-0723 (RWR)
Aboassy v. Bush	)	Case No. 05-CV-0748 (RMC)
Hamlily v. Bush	)	Case No. 05-CV-0763 (JDB)
Imran v. Bush	)	Case No. 05-CV-0764 (CKK)
Al Habashi v. Bush	)	Case No. 05-CV-0765 (EGS)
Al Hamamy v. Bush	)	Case No. 05-CV-0766 (RJL)
Hamoodah v. Bush	)	Case No. 05-CV-0795 (RJL)
Khiali-Gul v. Bush	)	Case No. 05-CV-0877 (JR)
Rahmattullah v. Bush	)	Case No. 05-CV-0878 (CKK)
Mohammad v. Bush	)	Case No. 05-CV-0879 (RBW)
Nasrat v. Bush	)	Case No. 05-CV-0880 (ESH)
Rahman v. Bush	)	Case No. 05-CV-0882 (GK)
Bostan v. Bush	)	Case No. 05-CV-0883 (RBW)
Muhibullah v. Bush	)	Case No. 05-CV-0884 (RMC)
Mohammad v. Bush	)	Case No. 05-CV-0885 (GK)
Wahab v. Bush	)	Case No. 05-CV-0886 (EGS)
Chaman v. Bush	)	Case No. 05-CV-0887 (RWR)
Gul v. Bush	)	Case No. 05-CV-0888 (CKK)

Basardh v. Bush	)	Case No. 05-CV-0889 (ESH)
Nasrullah v. Bush	)	Case No. 05-CV-0891 (RBW)
Shaaban v. Bush	)	Case No. 05-CV-0892 (CKK)
Sohail v. Bush	)	Case No. 05-CV-0993 (RMU)
Tohirjanovich v. Bush	)	Case No. 05-CV-0994 (JDB)
Al Karim v. Bush	)	Case No. 05-CV-0998 (RMU)
Al-Khalaqi v. Bush	)	Case No. 05-CV-0999 (RBW)
Sarajuddin v. Bush	)	Case No. 05-CV-1000 (PLF)
Kahn v. Bush	)	Case No. 05-CV-1001 (ESH)
Mohammed v. Bush	)	Case No. 05-CV-1002 (EGS)
Mangut v. Bush	)	Case No. 05-CV-1008 (JDB)
Hamad v. Bush	)	Case No. 05-CV-1009 (JDB)
Khan v. Bush	)	Case No. 05-CV-1010 (RJL)
Zuhoor v. Bush	)	Case No. 05-CV-1011 (JR)
Ali Shah v. Bush	)	Case No. 05-CV-1012 (ESH)
Salaam v. Bush	)	Case No. 05-CV-1013 (JDB)
Al-Hela v. Bush	)	Case No. 05-CV-1048 (RMU)
Mousovi v. Bush	)	Case No. 05-CV-1124 (RMC)
Khalifh v. Bush	)	Case No. 05-CV-1189 (JR)
Zalita v. Bush	)	Case No. 05-CV-1220 (RMU)
Ahmed v. Bush	)	Case No. 05-CV-1234 (EGS)
Aminullah v. Bush	)	Case No. 05-CV-1237 (ESH)
Ghalib v. Bush	)	Case No. 05-CV-1238 (CKK)

Al Khaiy v. Bush	)	Case No. 05-CV-1239 (RJL)
Bukhari v. Bush	)	Case No. 05-CV-1241 (RMC)
Pirzai v. Bush	)	Case No. 05-CV-1242 (RCL)
Peerzai v. Bush	)	Case No. 05-CV-1243 (RCL)
Alsawam v. Bush	)	Case No. 05-CV-1244 (CKK)
Mohammadi v. Bush	)	Case No. 05-CV-1246 (RWR)
Al Gincio v. Bush	)	Case No. 05-CV-1310 (RJL)
Ullah v. Bush	)	Case No. 05-CV-1311 (RCL)
Al Bihani v. Bush	)	Case No. 05-CV-1312 (RJL)
Mohammed v. Bush	)	Case No. 05-CV-1347 (GK)
Saib v. Bush	)	Case No. 05-CV-1353 (RMC)
Hatim v. Bush	)	Case No. 05-CV-1429 (RMU)
Al-Subaiy v. Bush	)	Case No. 05-CV-1453 (RMU)
Dhiab v. Bush	)	Case No. 05-CV-1457 (GK)
Ahmed Doe v. Bush	)	Case No. 05-CV-1458 (ESH)
Sadkhan v. Bush	)	Case No. 05-CV-1487 (RMC)
Faizullah v. Bush	)	Case No. 05-CV-1489 (RMU)
Faraj v. Bush	)	Case No. 05-CV-1490 (PLF)
Khan v. Bush	)	Case No. 05-CV-1491 (JR)
Ahmad v. Bush	)	Case No. 05-CV-1492 (RCL)
Amon v. Bush	)	Case No. 05-CV-1493 (RBW)
Al Wirghi v. Bush	)	Case No. 05-CV-1497 (RCL)
Nabil v. Bush	)	Case No. 05-CV-1504 (RMC)

Al Hawary v. Bush	)	Case No. 05-CV-1505 (RMC)
Shafiiq v. Bush	)	Case No. 05-CV-1506 (RMC)
Kiyemba v. Bush	)	Case No. 05-CV-1509 (RMU)
Idris v. Bush	)	Case No. 05-CV-1555 (JR) (Consolidated with 05-CV-1725)
Attash v. Bush	)	Case No. 05-CV-1592 (RCL)
Al Razak v. Bush	)	Case No. 05-CV-1601 (GK)
Mamet v. Bush	)	Case No. 05-CV-1602 (ESH)
Rabbani v. Bush	)	Case No. 05-CV-1607 (RMU)
Zahir v. Bush	)	Case No. 05-CV-1623 (RWR) (Consolidated with 05-CV-01236)
Akhtiar v. Bush	)	Case No. 05-CV-1635 (PLF)
Ghanem v. Bush	)	Case No. 05-CV-1638 (CKK)
Albkri v. Bush	)	Case No. 05-CV-1639 (RBW)
Al-Badah v. Bush	)	Case No. 05-CV-1641 (CKK)
Almerfedi v. Bush	)	Case No. 05-CV-1645 (PLF)
Zaid v. Bush	)	Case No. 05-CV-1646 (JDB)
Al-Bahooth v. Bush	)	Case No. 05-CV-1666 (ESH)
Al-Siba'i v. Bush	)	Case No. 05-CV-1667 (RBW)
Al-Uwaidah v. Bush	)	Case No. 05-CV-1668 (GK)
Al-Jutaili v. Bush	)	Case No. 05-CV-1669 (TFH)
Ali Ahmed v. Bush	)	Case No. 05-CV-1678 (GK)
Khandan v. Bush	)	Case No. 05-CV-1697 (RBW)
Kabir (Sadar Doe) v. Bush	)	Case No. 05-CV-1704 (JR)

Al-Rubaish v. Bush	)	Case No. 05-CV-1714 (RWR)
Qasim v. Bush	)	Case No. 05-CV-1779 (JDB)
Sameur v. Bush	)	Case No. 05-CV-1806 (CKK)
Al-Harbi v. Bush	)	Case No. 05-CV-1857 (CKK)
Aziz v. Bush	)	Case No. 05-CV-1864 (HHK)
Hamoud v. Bush	)	Case No. 05-CV-1894 (RWR)
Al-Qahtani v. Bush	)	Case No. 05-CV-1971 (RMC)
Alkhemisi v. Bush	)	Case No. 05-CV-1983 (RMU)
Gamil v. Bush	)	Case No. 05-CV-2010 (JR)
Al-Shabany v. Bush	)	Case No. 05-CV-2029 (JDB)
Othman v. Bush	)	Case No. 05-CV-2088 (RWR)
Ali Al Jayfi v. Bush	)	Case No. 05-CV-2104 (RBW)
Jamolovich v. Bush	)	Case No. 05-CV-2112 (RBW)
Al-Mudafari v. Bush	)	Case No. 05-CV-2185 (JR)
Al-Mithali v. Bush	)	Case No. 05-CV-2186 (ESH)
Al-Asadi v. Bush	)	Case No. 05-CV-2197 (HHK)
Alhag v. Bush	)	Case No. 05-CV-2199 (HHK)
Nakheelan v. Bush	)	Case No. 05-CV-2201 (ESH)
Al Subaie v. Bush	)	Case No. 05-CV-2216 (RCL)
Ghazy v. Bush	)	Case No. 05-CV-2223 (RJL)
Al-Shimrani v. Bush	)	Case No. 05-CV-2249 (RMC)
Amin v. Bush	)	Case No. 05-CV-2336 (PLF)
Al Sharbi v. Bush	)	Case No. 05-CV-2348 (EGS)

Ben Bacha v. Bush	)	Case No. 05-CV-2349 (RMC)
Zadran v. Bush	)	Case No. 05-CV-2367 (RWR)
Alsaaei v. Bush	)	Case No. 05-CV-2369 (RWR)
Razakah v. Bush	)	Case No. 05-CV-2370 (EGS)
Al Darbi v. Bush	)	Case No. 05-CV-2371 (RCL)
Haleem v. Bush	)	Case No. 05-CV-2376 (RBW)
Al-Ghizzawi v. Bush	)	Case No. 05-CV-2378 (JDB)
Awad v. Bush	)	Case No. 05-CV-2379 (JR)
Al-Baidany v. Bush	)	Case No. 05-CV-2380 (CKK)
Al Rammi v. Bush	)	Case No. 05-CV-2381 (JDB)
Said v. Bush	)	Case No. 05-CV-2384 (RWR)
Al Halmandy v. Bush	)	Case No. 05-CV-2385 (RMU)
Mohammon v. Bush	)	Case No. 05-CV-2386 (RBW)
Al-Quhtani v. Bush	)	Case No. 05-CV-2387 (RMC)
Thabid v. Bush	)	Case No. 05-CV-2398 (ESH)
Al Yafie v. Bush	)	Case No. 05-CV-2399 (RJL)
Rimi v. Bush	)	Case No. 05-CV-2427 (RJL)
Almjrd v. Bush	)	Case No. 05-CV-2444 (RMC)
Al Salami v. Bush	)	Case No. 05-CV-2452 (PLF)
Al Shareef v. Bush	)	Case No. 05-CV-2458 (RWR)
Khan v. Bush	)	Case No. 05-CV-2466 (RCL)
Hussein v. Bush	)	Case No. 05-CV-2467 (PLF)
Al-Delebany v. Bush	)	Case No. 05-CV-2477 (RMU)

Al-Harbi v. Bush

) Case No. 05-CV-2479 (HHK)

NOTICE

Respondents hereby provide notice regarding steps being taken in the wake of the Supreme Court's recent decision in *Hamdan v. Rumsfeld*, 548 U.S. ___, slip op. (U.S. June 29, 2006), on the issue of whether the District Court may exercise jurisdiction over cases, such as those captioned above, pending on the date of enactment of the Detainee Treatment Act of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680 ("the Act").

The Act, among other things, amends 28 U.S.C. § 2241 to eliminate court jurisdiction to consider *habeas* petitions and other claims by aliens held as enemy combatants at Guantanamo Bay, *id.*, § 1005(e)(1), and creates an exclusive review mechanism in the D.C. Circuit to address the validity of the detention of such aliens and final decisions of any military commissions, *id.*, § 1005(e)(1), (e)(2), (e)(3). Section 1005(e)(2) of the Act states that the D.C. Circuit "shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant," and it further specifies the scope and intensiveness of that review. While the Supreme Court in *Hamdan* held that § 1005(e)(1) of the Detainee Treatment Act did not apply to *habeas* petitions pending prior to the enactment of the Act, it recognized that the exclusive review provisions of the Act did expressly apply to cases pending prior to enactment. Although the petitioner in *Hamdan* escaped the Act because his challenge did not involve a final decision of a military commission within the exclusive jurisdiction of the Court of Appeals under § 1005(e)(3), the Court reserved the question of the effect of the exclusive review provisions of the Act on other cases, stating that

“[t]here may be *habeas* cases that were pending in the lower courts at the time the DTA was enacted that do qualify as challenges to ‘final decision[s]’ within the meaning of subsection (e)(2) or (e)(3). We express no view about whether the DTA would require transfer of such an action to the District of Columbia Circuit.” *Hamdan*, slip op. at 18, n.14. The above-captioned cases, to the extent they do not involve military commission claims, are such cases, *i.e.*, challenges to petitioners’ designation as enemy combatants through Combatant Status Review Tribunals. Given the Act’s investment of exclusive review in the Court of Appeals, the District Court lacks jurisdiction over the cases for it is well-settled that an exclusive-review scheme, where applicable, precludes the exercise of jurisdiction under more general grants of jurisdiction, including *habeas corpus*. *Cf., e.g.*, 5 U.S.C. § 703 (“form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for . . . writs of . . . habeas corpus”); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207-09 (1994) (“exclusive” jurisdiction under federal Mine Act precludes assertion of district court jurisdiction); *FCC v. ITT World Communications, Inc.*, 466 U.S. 463, 468 (1984) (Hobbs Act) (“The appropriate procedure for obtaining judicial review of the agency’s disposition of these issues was appeal to the Court of Appeals as provided by statute.”); *Laing v. Ashcroft*, 370 F.3d 994, 999-1000 (9th Cir. 2004) (“§ 2241 is ordinarily reserved for instances in which no other judicial remedy is available”); *Lopez v. Heinauer*, 332 F.3d 507, 511 (8th Cir. 2003) (“Because judicial review was available . . . the district court was not authorized to hear this § 2241 habeas petition.”). *See also Telecommunications Research and Action Center v. FCC*, 750 F.2d 70, 77 (D.C. Cir. 1984) (“even where Congress has not expressly stated that statutory jurisdiction is

‘exclusive’ . . . a statute which vests jurisdiction in a particular court cuts off original jurisdiction in other courts in all cases covered by that statute”) (footnote omitted); *id.* at 75, 78-79 (request for relief in district court that might affect Court of Appeals’ future, exclusive jurisdiction is subject to the exclusive review of the Court of Appeals).

For these reasons, the Supreme Court’s decision in *Hamdan* has not resolved the issue of whether this Court may exercise jurisdiction over the above-captioned cases in light of the Act, to the extent the cases do not involve military commission claims addressed by *Hamdan*. The effect of the Act on pending cases was addressed in supplemental briefing in the Guantanamo detainee appeals pending before the D.C. Circuit (*Boumediene v. Bush*, No. 05-5062, and *Al Odah v. United States*, No. 05-5064),¹ and respondents have recently requested that the Court of Appeals permit additional briefing on the effect of the *Hamdan* decision on this issue.² Accordingly, respondents will continue to assert that a stay of proceedings in the above-captioned cases is appropriate pending the resolution of the effect of the Act by the D.C. Circuit.³

Dated: July 7, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

¹ Oral argument before the D.C. Circuit was held on March 22, 2006.

² Petitioners in the cases involved in the appeals have opposed respondents’ request for supplemental briefing.

³ In addition, respondents will continue to assert that a stay remains appropriate for the separate and independent reason that the substantive issues in these cases, including whether petitioners have constitutional due process rights and, if so, whether the Combatant Status Review Tribunals satisfy any such rights, which were briefed and argued before the Court of Appeals prior to enactment of the Detainee Treatment Act, remain under consideration by the Court of Appeals.

DOUGLAS N. LETTER
Terrorism Litigation Counsel

/s/ Terry M. Henry

JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)
TERRY M. HENRY
JAMES J. SCHWARTZ
PREEYA M. NORONHA
ROBERT J. KATERBERG
NICHOLAS J. PATTERSON
ANDREW I. WARDEN
EDWARD H. WHITE
MARC A. PEREZ

Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
Tel: (202) 514-4107
Fax: (202) 616-8470

Attorneys for Respondents